IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 435 of 2000(A)

O.P (MV).NO.1407/1994 DTD. 23/12/99 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA.

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APPELLANT/PETITIONER IN OP (MV):

SUKUMARAN, AGED 48 YEARS,
S/O. LATE BHASKARAN,
KADALASSERRY HOUSE, RESIDING AT
KOODAPUZHA NORTH DESOM,
KIZHAKKE- CHALAKUDY VILLAGE,
CHALAKUDY.P.O.,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY,
SRI.A.N.SANTHOSH.

RESPONDENTS/RESPONDENTS IN OP (MV):

***1. V.T. SURESH, S/O. THANKAPPAN,**
VADAKKEDATH HOUSE, PARAPPOOKKARA DESOM,
NELLAYI.P.O., THRISSUR DIST.

2. JOSE, S/O. KOCHAPPAN,
ANTHIKKADAN HOUSE,
ANCHERI DESOM,
OLLUKKARA VILLAGE,
THRISSUR DIST.

M.F.A. NO. 435/2000:

3. MANAGER, ORIENTAL INSURANCE CO. LTD., KODUNGALLUR.

***THE NAME OF FIRST RESPONDENT IS DELETED FROM PARTY ARAY AT THE RISK OF THE APPELLANT VIDE ORDER DTD. 02/02/07 ON M.F.A.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA).

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 435 of 2000

Dated this the 27th day of June, 2007

Judgment

Koshy, J.

Appellant/Claimant met with an accident on 4.10.1992 due to the negligent driving of the lorry by the second respondent. The above lorry was owned by first respondent and insured by the third respondent insurance company. As a result of the accident, appellant sustained serious bodily injuries including rupture of spleen and liver and dislocation of left elbow. He was treated in various hospitals. Finally, Dr. R.V. Prasad, Assistant Professor of Surgery, Medical College Hospital certified that he had total permanent disability of 25%. The above doctor was examined to prove the medical certificate and proved the same. Ext.A9 is the disability certificate which states as follows:

> "Ugly and big scar over the abdomen with limitation of movement, decreased power of digestion due to recurrent pancreatitis, decreased resistance to infections due to removal of spleen and prone to recurrent

> respiratory infections and intestinal infections, pain and limitation of movement of the left elbow due to fracture and fixation and due to osteoarthritis and the long scar."

He was treated with debridement/repair with internal fixation of lateral epicondyle and splenectomy. He claimed a compensation of Rupees Three lakhs. Tribunal has awarded only an amount of Rs.98,450/-. Aggrieved by the above, this appeal is filed. Only quantum of compensation is disputed in this appeal and we are considering that question only in this appeal.

2. At the time of accident, the claimant was aged 39 as can be seen from Ext.A9. According to the claimant, his daily income was Rs.300/-. He was a registered goldsmith. Ext.A11 is the copy of the certificate of recognition as goldsmith. Ext.A12 shows that he was maintaining a stock account book approved by Central Excise. However, tribunal did not accept the contention that he was getting Rs.300/- per day, but, only fixed Rs.1,250/- as the monthly income. The appellant was a goldsmith, a technical worker. That fact is not disputed. He was maintaining a family and considering the income prevailing even for a manual

worker in Kerala State during the relevant time, we are of the opinion that at least Rs.1,500/- should have been fixed as monthly income. The tribunal found that he was hospitalised and he was under treatment for a period of four months and granted Rs.5,000/- towards that. If Rs.1,500/- is the monthly income, actual loss of earning for the period of treatment will be Rs.6,000/-. Hence, he is entitled to an additional compensation of Rs.1,000/- on that count. He was aged 39 years. The tribunal has fixed 16 as the multiplier. It was argued that considering the life expectancy of a normal average person, the multiplier of 16 fixed by the tribunal is on the lower side. But, the Apex Court in Smt. Supe Dei v. M/s. National Insurance Co. Ltd. (JT 2002 (Suppl.1) SC 451) held that though second schedule has been framed for the purpose of granting compensation under section 163-A of the Motor Vehicles Act, it serves as a guideline for determination of compensation under section 166 of the Motor Vehicles Act also. For a person aged between 35 and 40, apt multiplier is 16 as per the second schedule. Hence, we see no ground to increase the multiplier. Doctor certified 25% disability. The doctor who certified the same was examined before the court and

proved Ext.A9 certificate. According to the doctor, there is 25% disability. If that be so, compensation payable will be Rs.1500 x 12 x 16 x 25/100 = Rs.72,000/-. The tribunal has granted only Rs.43,200/- towards permanent disability. Therefore, appellant will be entitled to Rs.28,800/- on this count. It is submitted that reimbursement of expenses granted for treatment and other compensation granted for pain and suffering etc. are very low and compensation should be granted for future treatment etc. are not considered here considering the total amount granted. The additional compensation of Rs.29,800/- should be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit. Considering the date of accident and age of the appellant, on deposit of the amount, the appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.435/2000

JUDGMENT

Dated:27th June, 2007